time and it necessarily follows that the amount of such percentage would vary according to the total collections made during the course of a year and each month. Under such circumstances it is my opinion that the percentage allowed to the recorders cannot be classed as salary but falls within the term and definition of fees allowed for the performance of particular services. In addition to the two cases cited supra, I call your attention to the following cases:

- Benedict v. U. S., 176 U. S. 357;
- Lobrano v. Police Jury etc. (La.), 90 So. 423;
- Taylo et al. v. Harwell G. Davis (Ala.), 109 So. 433;
- State ex rel. Ward v. Henry (Ala.), 139 So. 278;
- and

Under the law, as declared in the authorities, heretofore cited, it is my opinion that the language of Chapter 169 of the Acts of 1943 applies to county recorders in office at the time of the effective date of the Act and that the answer to your question is in the affirmative.

DIVISION OF LABOR: Whether the check-off to pay union dues violates the law against assignment of future wages.

March 20, 1943.

Hon. Thomas R. Hutson,
Commissioner of Labor,
Room 225 State Capitol,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state you desire an opinion in answer to the following question:

"Can a provision providing for the so-called check-off system of dues to a union be inserted in a contract between the employer and the union in view of the present laws in Indiana with respect to wage assignments and the like?"
Section 40-201 Burns' 1940 Replacement, Acts 1899, Ch. 124, Sec. 4, p. 93, prohibits the assignment of future wages to become due, as follows:

"The assignment of future wages, to become due to employees from persons, companies, corporations or associations affected by this act, is hereby prohibited, nor shall any agreement be valid that relieves said persons, companies, corporations or associations from the obligation to pay weekly, the full amount due, or to become due, to any employee in accordance with the provisions of this act: Provided, That nothing in this act shall be construed to prevent employers advancing money to their employees."

Section 40-206 Burns' 1940 Replacement, Acts 1909, Ch. 34, Sec. 2, p. 76, provides as follows:

"No assignment of his or her wages or salary by any employee or wage earner to any wage broker, or any other person for his benefit, shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part of the wages or salary earned or to be earned during a period not exceeding thirty (30) days immediately following the date of the assignment. Any assignment which shall be postdated or dated on any other date than that of its actual execution shall be void and of no effect for any purpose whatever."

Section 4 of the same Act of 1909 provides as follows:

"No assignment of his wages or salary by a married man, who shall be the head of a family residing in this state, shall be valid or enforceable without the consent of his wife, evidenced by her signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments of conveyances, and no wage broker or person connected with him, directly or indirectly, shall be authorized to take any such acknowledgment."
The difficulty in answering your questions arises from the lack of a definite statement as to the exact wording of the proposed check-off provision of a labor contract. Without doubt a check-off provision drawn in the form of an assignment of wages would violate Section 4 of the 1899 Act, and perhaps Section 4 of the 1909 Act.

In the case of Wells v. Vandalia R. R. Co. (1914), 56 Ind. App. 211, the court construed an agreement between an employer and an employee for the withholding of wages as an assignment, and therefore in violation of the 1899 Act, supra. However, it should be noted that the agreement in that case provided:

"that the agreement that the above-named amount shall be appropriated from my wages shall apply also to any other amount arising from changes as aforesaid, and shall constitute an appropriation and assignment in advance to the said company or other associated company in trust for the purpose of the relief fund of such portions of my wages, which assignment shall have precedence over any other assignment by me of my wages, or of any claim upon them on account of liabilities incurred by me." Pages 214 and 215.

Clearly such language constituted an assignment.

In the case of Cleveland, Cincinnati, Chicago and St. Louis Ry. Co., et al. v. Marshall (1914), 182 Ind. 280, 284, the court construed Sections 2 and 3 of the 1909 Act as applying only to wage brokers. In this case there was no contention on appeal that the language of the instrument in question did not constitute an assignment, but the contention of the appellant was (1) that Section 4 of the 1909 Act only applied to wage brokers, and (2) that said section was unconstitutional. Both these contentions were overruled by the court.

In determining whether or not an agreement constitutes an assignment it is important to determine whether or not the original owner of the right or property parted with his control over the same. If he does not, it is no assignment. 5 C. J. 912. So, also, an agreement which reserves to the original owner a right of revocation is not an assignment. Section 424 Williston on Contracts (Rev. ed.).
In Landis v. The Standard Life and Accident Insurance Co. (1892), 6 Ind. App. 502, the Appellate Court of Indiana construed the effect of an order by an employee on his employer to pay out of his wages as brakeman, $6.25 for the months of November, December, January and February, as premiums on a policy of insurance executed by The Standard Life and Accident Insurance Company to the employee. The employee, in bringing suit on the policy, claimed that the orders were an assignment pro tanto of the wages to become due. However, the employee in this case in person drew and receipted for all the money due or owing him as wages for each of the four months, and the court properly held there was no assignment of the employee's wages. Similarly, it is generally held that the maker of a check may stop payment and that a check is not an assignment of the deposit.

In Braddon, et al. v. Three Point Coal Corporation, et al. (1941), 288 Ky. 734, 157 S. W. (2d) 349, the Court of Appeals of Kentucky had under consideration check-off orders which provided as follows:

"I hereby direct the Three Point Coal Company to deduct from my wages all Dues, Assessments and Initiation fees, in accordance with the provisions of our District Wage Agreement by and between the Harlan County Coal Operators Association and the United Mine Workers of America, District 19."

The court said concerning the check-off order:

"We agree with the chancellor that the check-off orders were not violative of the constitutional or statutory requirements that wages be paid in money, or the statutes relative to the assignment or sale of wages."

An assignment imports a transfer of an interest in property, tangible or intangible, in being at the time of the assignment or to come into being thereafter. The assignor has no power to revoke it. But under a direction, authorization or mere order with implied or express power to revoke, the owner can revoke his act at any time he pleases, and therefore his act does not constitute an assignment.
Therefore, I am of the opinion that a provision could be inserted in a labor contract between the union and the employer, which, if properly drawn, would not constitute a violation of the above statutes prohibiting assignment of wages.

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**INSURANCE DEPARTMENT: Authority of Title Insurance Companies.**

March 22, 1943.

Hon. Frank J. Viehmann,  
Insurance Commissioner,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning the Lake County Title Company of Crown Point, Indiana, in which you ask for an official opinion as to the company’s authority under its charter to do a certain type of business which will later be set out. The Lake County Title Company was organized under “The Voluntary Association Act” enacted by the Legislature in 1901, using section 18 of the Act as the authority for the organization. This section was amended in 1919, Acts of 1919, page 429, so as to provide as follows:

“Such association may be formed for one only of the following purposes: * * *

“Section 18. To organize companies for the purpose of carrying on the business of insuring titles to real estate, and to make abstracts, loans and collections in connection therewith, and to buy, own, hold and sell real estate and collect rents thereon, in the manner to be fully stated in such articles, or for the purpose of making abstracts, loans and collections.”

As originally enacted, the section read as follows:

“Sec. 18. To organize companies for the purpose of carrying on the business of insuring titles to real estate, and to make abstracts, loans and collections in connection therewith, in the manner to be fully stated in such articles.”